

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RAY WILLIAMS, and
FRANCENE WILLIAMS,

Plaintiffs,

CIVIL ACTION NO. 08-12271

vs.

DISTRICT JUDGE PAUL BORMAN
MAGISTRATE JUDGE DONALD A. SCHEER

LIBERTY BANK, and
TROTT AND TROTT, P.C.,

Defendants,

/

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

RECOMMENDATION: The instant Complaint should be dismissed, *sua sponte*, based on *res judicata*, since Plaintiffs are attempting to make the same factual allegations concerning the same cause of action against the same parties defendant as they did in an earlier action.

* * *

Plaintiffs filed the instant Complaint on May 23, 2008, seeking federal appellate review of a Wayne County Circuit Court decision allowing Defendant Liberty Bank to initiate foreclosure proceedings on a residence in Detroit, Michigan for failure to pay property taxes. Plaintiffs originally filed an action in the Wayne County Circuit Court on May 2, 2006, seeking a temporary restraining order enjoining a sheriff's sale of their Detroit residence. Plaintiffs alleged that their failure to pay their property taxes was not a breach of a mortgage held by Defendant.

The Wayne County Circuit Court granted Defendant's Motion for Summary Disposition on October 24, 2006. The Court allowed Defendant to proceed with foreclosure proceedings, and the bank was eventually granted a Sheriff's Deed to the Subject Property in January 2007. Plaintiffs' Motion for Relief from Order was denied by the Wayne County Circuit Court on January 12, 2007. The state court later denied Plaintiffs' Motion for Reconsideration in April 2007.

Plaintiffs then filed a complaint in federal court on July 2, 2007, raising the same facts, issues and claims previously raised and disposed of by the Wayne County Circuit Court. See Ray and Francene Williams v. Liberty Bank, Case Number 07-12761 (Judge Borman).¹ In an Order dated March 28, 2008, the district judge summarily dismissed the federal complaint for lack of subject matter jurisdiction, based on the Rooker-Feldman Doctrine, as a federal district court may not hear an appeal of a case already litigated in the state court. Plaintiff did not file an appeal with the Sixth Circuit Court of Appeals.

Plaintiffs' earlier federal action brought against Liberty Bank was based on identical facts and alleged the precise issue as the one at bar- an alleged violation of their constitutional rights as a result of the mortgage foreclosure. The doctrine of res judicata bars the relitigation of issues fact or law already determined in a prior proceeding against the same defendants, or those in privity with them. Young v. Township of Green Oak, 471 F.3d 674 (6th Cir.2006) ("The doctrine of *res judicata* bars a successive action if '(1) the prior action was decided on the merits, (2) both actions involve the same parties or their

¹The only difference between the two federal actions is that the Plaintiffs have now added the law firm hired by Liberty Bank to represent them in the foreclosure proceedings. The attorneys were clearly agents of the bank defendant, and in privity with their client in relation to the foreclosure proceedings.

privies, and (3) the matter in the second case was, or could have been, resolved in the first.' ").

Plaintiffs are now attempting to make the same factual allegations concerning the same cause of action against the same parties defendant in the earlier action. A final judgment on the merits precludes litigation of the same claims in a second action.

Accordingly, I recommend that the instant complaint be dismissed, *sua sponte*, based on *res judicata*. Given this recommendation, Plaintiffs' Motion for a Preliminary Injunction (Docket #2) should be denied. The parties are advised that any objections to this Report and Recommendation must be filed with the Court within ten (10) days after they are served with a copy, or further appeal from Judge Borman's acceptance thereof is waived.

s/Donald A. Scheer
DONALD A. SCHEER
UNITED STATES MAGISTRATE JUDGE

DATED: June 17, 2008

CERTIFICATE OF SERVICE

I hereby certify on June 17, 2008 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on June 17, 2008. **Ray and Francene Williams.**

s/Michael E. Lang
Deputy Clerk to
Magistrate Judge Donald A. Scheer
(313) 234-5217